

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

_____	)	
CUMBERLAND FARMS, INC.,	)	Case No. 2:10-cv-4658-ADS-AKT
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
LEXICO ENTERPRISES, INC. and	)	
FRANK KESHTGAR	)	
Defendants	)	July 28, 2011
_____	)	

**PLAINTIFF CUMBERLAND FARMS'**  
**MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, plaintiff Cumberland Farms, Inc. ("Cumberland") respectfully moves for summary judgment with regard to both counts of its Complaint dated October 8, 2010. As more fully set forth in the accompanying memorandum of law, Cumberland is entitled to judgment as a matter of law on each Count of its Complaint for the following reasons:

1. Cumberland's first cause of action seeks recovery of attorneys' fees and costs from defendant Lexico Enterprises, Inc. ("Lexico") under Paragraph 19 of the Lease between the parties. Cumberland is entitled to judgment as a matter of law on this claim because the unambiguous language of the Lease provides that Lexico is required to reimburse Cumberland for fees and costs incurred in the enforcement of the parties' Lease. Lexico caused Cumberland to incur fees and costs in order to enforce Cumberland's right to withhold consent

to a proposed sale and assignment of the parties' franchise agreements, and must now reimburse Cumberland for those fees and costs.

2. Cumberland's second cause of action seeks recovery of attorneys' fees and costs from defendant Frank Keshtgar ("Keshtgar") under a Guaranty issued by Keshtgar in Cumberland's favor. Keshtgar, who was Lexico's principal, signed the Guaranty in consideration for credit, loans and/or other sums advanced to Lexico. Cumberland is entitled to judgment as a matter of law on its second claim because all of the required elements of a claim under a guaranty have been satisfied. Lexico owes a debt of attorneys' fees and costs to Cumberland, and it is undisputed that Keshtgar guaranteed the payment of Lexico's debts. It is further undisputed that neither Lexico nor Keshtgar has paid these attorneys' fees and costs. .

In support of its Motion, CFI submits herewith an accompanying memorandum of law and attached exhibits, a Local Rule 56.1 Statement, and the Declaration of Timothy J. Brooks and attached exhibits. As set forth more specifically below, there are no genuine issues of material fact as to Cumberland's claims, and Cumberland is entitled to judgment as a matter of law.

PLAINTIFF,  
CUMBERLAND FARMS, INC.

By: /s/ Paul D. Sanson  
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**CERTIFICATION OF SERVICE**

I hereby certify that, on this 28th day of July, 2011, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Laurie A. Sullivan  
Laurie A. Sullivan